

**STATE OF MICHIGAN
IN THE SUPREME COURT**

ELLEN M. ANDARY, a legally incapacitated
adult, by and through her Guardian and
Conservator, MICHAEL T. ANDARY, M.D.,
PHILIP KRUEGER, a legally incapacitated
adult, by and through his Guardian, RONALD
KRUEGER & MORIAH, INC., d/b/a
EISENHOWER CENTER, a Michigan
corporation,

Plaintiffs-Appellees,

Supreme Court No. 164772

Court of Appeals No. 356487

Ingham County Case No. 19-738-CZ

**THIS APPEAL INVOLVES A RULING
THAT A PROVISION OF THE
CONSTITUTION, A STATUTE, RULE
OR REGULATION, OR OTHER STATE
GOVERNMENTAL ACTION IS
INVALID.**

vs.

USAA CASUALTY INSURANCE COMPANY,
a foreign corporation, and CITIZENS
INSURANCE COMPANY OF AMERICA,
a Michigan Corporation,

Defendants-Appellants.

**MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION'S
AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES'
MOTIONS FOR IMMEDIATE CONSIDERATION AND TO STAY PRECEDENTIAL
EFFECT AND APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT OF QUESTION PRESENTED

Should this Court grant immediate consideration and stay the precedential effect of the Court of Appeals' 2-1 decision in *Andary, et al v USAA Casualty Insurance Company, et al*, ___ Mich App ___; ___ NW2d ___ (Docket No. 356487, rel'd August 25, 2022) pending the Court's review of Defendants-Appellants' Application for Leave to Appeal, when the decision significantly reverses savings for Michigan drivers, who will be paying to offset the MCCA's 3.6 billion deficit created by the elimination of many cost saving measures enacted by the amended No Fault Act?

Amicus Curiae, the Michigan Catastrophic Claims Association answers: "Yes."

I. STATEMENT OF INTEREST AND BRIEF IN SUPPORT OF STAY¹

In 1978, the Legislature created the Michigan Catastrophic Claims Association (the “MCCA”) as an association of all insurers writing no-fault insurance in Michigan. Every insurance company writing no-fault auto insurance required by Michigan’s No Fault Insurance Act must belong to the MCCA. MCL 500.3104(1). The MCCA reimburses its members for amounts paid in personal protection insurance benefits, also known as PIP benefits, in excess of a statutory retention amount. MCL 500.3104(o). The MCCA’s mission is to protect the financial integrity of Michigan’s auto insurance industry by providing a reinsurance mechanism for unlimited PIP benefits.

Effective June 11, 2019, the Legislature enacted 2019 PA 21 and 2019 PA 22, both of which made significant amendments to the No Fault Insurance Act. The amendments included fee schedules and other cost saving measures that limited the amounts service providers were eligible to receive in reimbursement. Since the Legislature created the MCCA in 1978 through July 1, 2020, Michigan’s No-Fault Insurance Act required insurers writing no-fault insurance to provide unlimited lifetime PIP benefits to persons injured in motor vehicle accidents. Beginning July 2, 2020, as part of the 2019 amendments, insurance companies began offering policies with lower limits, although most of the insurance buying public continues to buy unlimited coverage.

Insurers must report catastrophic claims to the MCCA.² Of the 47,124 catastrophic claims reported from the MCCA’s inception until June 30, 2022, 16,880 claims remain open. Of those 16,880 open claims, 14,872 (89%) occurred before the Legislature enacted the amendments to the

¹ This brief was authored in whole by counsel for the MCCA. No one has made a monetary contribution to fund the preparation or submission of the brief. MCR 7.312(H)(4).

² The MCCA defines catastrophic claims as claims involving: traumatic brain injury; quadriplegia or paraplegia; burns involving 50% or more of the body; amputation of a major limb or multiple amputations; and other injuries where the costs of treatment exceed certain financial thresholds.

No-Fault Insurance Act. During the twelve months ending June 30, 2022, the MCCA reimbursed insurers an average of \$80.6 million per month.

After the Legislature passed the amendments to the No Fault Insurance Act, independent actuaries estimated that applying the amendments to all claims existing as of June 30, 2021 resulted in savings of \$4.39 billion. As of June 30, 2021, the MCCA's total assets less total estimated liabilities, which included the estimated savings that resulted from applying the amendments to all claims regardless of when they occurred, resulted in a surplus of \$5.04 billion. Based on these estimated savings, the MCCA returned approximately \$3.08 billion of its estimated surplus to its members, who in turn paid policyholders \$400 per car.

The Court of Appeals in *Andary, et al v USAA Casualty Insurance Company, et al*, ___ Mich App ___, ___ NW2d ___ (Docket No. 356487, rel'd August 25, 2022) ("*Andary*"), ruled that "the relevant statute is the one that existed when the [auto insurance] policies were issued." *Andary*, at p 9. In other words, after *Andary*, benefits for catastrophic claims resulting from motor vehicle accidents that occurred before the Legislature passed the amendments cannot be limited by the cost-saving measures in the amended statute. Accordingly, the independent actuaries engaged by the MCCA had to reverse the anticipated savings they had estimated on 14,872 (89%) of the MCCA's open claims. The independent actuaries now estimate that, as a result of the *Andary* decision, the MCCA has a deficit of over \$3.67 billion.

When there is a deficit, the MCCA is required to recoup the deficit from its members, amortized over at least fifteen years. MCL 500.3104(7)(d) and (9)(d). The members, in turn, pass along the deficit recoupment charge to the insurance buying public, regardless of the level of coverage chosen. As a result of the deficit, for policies sold during the fiscal year beginning July 1, 2023, Michigan consumers will be charged \$48 per car to offset the deficit created by the

elimination of the statute's cost-savings measures for the vast majority of the MCCA's open claims.

The MCCA has a direct interest in the outcome of this case. If the Court denies the motion to stay the precedential effect of the *Andary* decision, allowing the cost-savings provisions of the amended Act to apply only to losses occurring after the amended No-Fault Insurance Act was enacted, then the MCCA will have to reimburse significantly higher payments while the Court determines whether to accept the Application for Leave and – if it does accept the Application – while the appeal is pending. Such reimbursement will be difficult, if not impossible, for carriers to recoup from providers if the Court reverses the *Andary* decision in whole or part, leaving the MCCA in a deficit position that will be funded by the insurance-buying public.

II. CONCLUSION

Amicus Curiae MCCA requests that the Court grant Defendants-Appellants' motions for immediate consideration and to stay precedential effect, and stay the decision of the Court of Appeals pending review and decision by this Court.

Dated: September 21, 2022

By: /s/ KJ Miller
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CERTIFICATION OF WORD COUNT

This document contains 1,193 words, as measured by Microsoft Word's count function and it complies with the type-volume limitation of MCR 7.312(A) and MCR 7.212(B).